SECOND REMAND DETERMINATION

In the Matter of Certain Softwood Lumber from Canada:
Final Affirmative Countervailing Duty Determination,
Secretariat File No. USA-CDA-2002-1904-03
NAFTA Binational Panel Review

SUMMARY

In accordance with the Panel's June 7, 2004, decision in the above-referenced case, the Department of Commerce (the Department) provides this second remand determination with regard to the following issues: certain benchmark calculations, the denominator in the *ad valorem* rate calculation, and company exclusions. These issues, the first of which has multiple subparts, are discussed in detail below. After addressing each issue, the Department has recalculated the aggregate subsidy rate applicable to all producers and exporters of certain softwood lumber products from Canada, except for those companies excluded from the order. Additionally, relying on the stumpage subsidy rate determined in this second remand determination, the Department reconsidered its analysis of the five companies under consideration for exclusion, but for which we found above *de minimis* subsidy benefits in the Final Determination[1] and the Original Remand Determination.[2]

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[1] *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (Final Determination) and accompanying *Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada* (March 21, 2002) (Issues and Decision Memo). The Final Determination was subsequently amended. See *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36070 (May 22, 2002).

[2] Remand Determination In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, Secretariat File No. USA-CDA-2002-1904-03 NAFTA Binational Panel Review, January 12, 2004 (Original Remand Determination).

Although the Panel in its June 7, 2004 decision determined that the Department's remand methodology "was not inconsistent with the statute, and was a reasonable approach," Panel Decision, at 16, as we stated in our Original Remand Determination, we continue to disagree with the Panel's conclusion that there was not substantial evidence to support the Department's original benefit calculation in the final determination. Additionally, we disagree with the Panel's June 7, 2004 decision with respect to the remanded calculation and exclusion issues and continue to believe that those calculations were supported by record evidence and were otherwise in accordance with the law. Nevertheless, we have reconsidered our determination in light of that decision.

We received comments from the Coalition for Fair Lumber Imports Executive Committee (Coalition) and the Canadian Parties with proposed methodologies for implementing the Panel's remand.[3] Where appropriate, we have attempted to address concerns raised by the parties. It must be recognized, however, that our ability to do so is limited by the evidence available to us. Generally, the record evidence was developed with the original cross-border methodology in mind, not the current methodology. Thus, there are some limitations in the record that make it particularly difficult to address

[3] Comments on Quebec Subsidy Benefit Recalculation, Comments on Alberta Benefit Recalculations, Dewey Ballantine LLP on behalf of the Coalition, June 18, 2004; Comments for Remand Determination, Weil Gotshal & Manges on behalf of the Government of Canada, the Governments of Alberta, British Columbia, Manitoba, Ontario, and Saskatchewan, and the Gouvernment du Quebec, July 2, 2004; Comments for Second Remand Determination, Kaye Scholer on behalf of Terminal Forest Products, Ltd., July 8, 2004; Comments for Second Remand Determination, Kaye Scholer on behalf of Canadian Forest Products, Ltd., Lakeland Mills, Ltd, and The Pas Lumber Company, Ltd., July 8, 2004; Reply to Respondents' Comments on Remand Methodology, Dewey Ballantine LLP on behalf of the Coalition, July 8, 2004; Comments and Calculations of the Gouvernment du Quebec and Response, in part, to Petitioner's June 18, 2004 Submission, Arent Fox on behalf of the Gouvernment du Quebec, July 13, 2004; Reply to Respondents' Comments on Quebec Remand Methodology, Dewey Ballantine LLP on behalf of the Coalition, July 15, 2004; Reply to Petitioner's July 15, 2004 Submission, Arent Fox on behalf of the Gouvernment du Quebec, July 26, 2004; Comments on Respondents' Reply on Quebec Remand Methodology, Dewey Ballantine LLP on behalf of the Coalition, July 27, 2004; and Comments on British Columbia Subsidy Benefit Recalculation, Dewey Ballantine LLP on behalf of the Coalition, July 30, 2004.

all concerns raised by the parties. For example, as noted in our Original Remand Determination, the Coalition has raised some legitimate concerns about possible suppression of domestic log prices in Canada. We concluded that the record evidence was insufficient to rule out those prices entirely. Nevertheless, as the Panel has acknowledged, there is some evidence to suggest that the Coalition's concerns are valid, in which case the Department's methodology yields a conservative estimate of the subsidy benefit. In reconsidering issues in this remand, we remain mindful of those concerns, as well as other concerns raised by the responding parties. In dealing with the limitations we face in the evidentiary record, we have been guided by the principle that such issues should be resolved in a manner that addresses the legitimate concerns of all parties to the fullest extent possible to reach the most accurate and reasonable solution possible.

ANALYSIS AND DETERMINATION

I. Provincial Stumpage

Profit

The Panel directed the Department to reconsider the adjustment for profit with respect to the benchmarks for all provinces. The Panel recognized that it may not be unreasonable for the Department to reconsider the method used to estimate profit in Alberta, and accordingly, granted the Department's request for remand on this point.[4] However, the Panel stated that if the Department cannot determine a better estimate of the amount of profit for Alberta, it is not authorized to change it.

[4] We requested a voluntary remand with respect to Alberta's profit figure on the grounds that the harvesting costs we deducted from the market log prices already contained an amount for profit.

The approach to the issue of profit is properly analyzed in the context of the Department's market principles analysis. The Department's market principles analysis derives the market value of timber from the market value of logs. This analysis is predicated on the existence of three independent economic actors and two distinct transactions. The three independent actors are the sawmill, the independent harvester (the log seller) and the landowner (the standing timber seller). Only the independent harvester participates in the two transactions - the sale of the log to the sawmill, and the purchase of the standing timber from the landowner. The profit we need to adjust for is that of an independent harvester who paid stumpage for standing timber, incurred harvesting costs and made a *profit* on the log sales. The accurate calculation to implement this analysis would thus involve market log prices, from which we would deduct the actual costs incurred by independent harvesters and a reasonable allowance for profit.

As such the Department evaluated each province to determine whether the reported harvesting costs include the profit earned by an independent harvester. We observed that there are similarities in the harvesting cost data reported by the provinces that bear directly on this issue. Alberta and Ontario reported harvesting costs from integrated lumber producers who pay independent contractors to harvest for them. These independent contractors harvest timber for a fee. Alberta and Ontario's reported harvesting costs were therefore based on a fee for service. Obviously, a fee for harvesting services includes the profit the service provider is earning on its harvesting operations. Thus, it is neither necessary nor appropriate to add an additional amount for profit to the harvesting costs reported by Alberta and Ontario. To do so would, without question, be double counting profit. Therefore, we did

not make an adjustment for profit for Ontario because profit is already built into the reported harvesting costs.

If permitted by the Panel we would make no adjustment for profit for Alberta for the very same reasons stated above for Ontario. This fact underlies the reason why the Department requested the issue on remand because we believed that the Department inadvertently erred in the first place by making a separate profit adjustment. In its decision, however, the Panel stated that we are not permitted to treat Alberta as we have treated Ontario. Nevertheless, we direct the Panel's attention to the flaws in the calculation of profit for Alberta.

The Canadian parties calculated profit in Alberta as follows: market log prices minus harvesting costs and *Crown stumpage* equals C$ 3.46, which includes "some amount of profit." The basic flaw in the Alberta calculation is that it *uses Crown stumpage* to determine the market-based profit. This profit calculation is therefore essentially identical to the formula to calculate for determining the benefit conferred by the provincial stumpage programs, which makes no sense methodologically. The purpose of our market principles analysis is to determine whether *Crown stumpage itself* constitutes adequate remuneration. It is illogical to use the allegedly subsidized Crown stumpage price in calculating the market benchmark that is to be used to determine if that very same Crown stumpage price is in fact subsidized. Under such a methodology, the so-called "profit" may, in fact, be a subsidy benefit. Nevertheless, in light of the Panel's decision and despite our disagreement with the Panel's remand, we have used Alberta's calculation as the basis for a profit calculation. However, Alberta has acknowledged that the entire C$ 3.46 is not profit for the harvester, but rather the C$ 3.46 includes

"some amount of profit." In light of Alberta's statement, and to mitigate the impact of the flaw in Alberta's methodology, we concluded that there was a better option than simply using C$ 3.46 as the profit amount.

As noted above, our market principles analysis is modeled on two separate transactions by independent economic actors: the independent harvester (log seller) and owner of the trees (standing timber seller). The C$ 3.46 figure is available to cover the profit of both of those independent economic actors. Lacking information on the separate transactions, it is reasonable to divide the profit evenly between the two. This approach is consistent with past Department practice where we lacked record information to determine whether and to what extent certain costs or benefits accrued to various parties in a transaction. See, e.g., LTV Steel Co. v. United States, 985 F. Supp. 95, 117 (CIT 1997). Accordingly, for purposes of this remand determination we have recalculated harvesting costs in Alberta to include C$ 1.73 as an amount for profit.

Quebec argued that the Department should use the Alberta method to calculate a profit amount for harvesting costs in Quebec as well. We followed the formula as set out by the Canadian parties in footnote 83 of the Canadian Parties' Submission on February 9, 2004. From the weighted-average domestic price for SPF[5], we subtracted the harvesting costs incurred by the independent harvester and then subtracted the average price for stumpage from the private forest. However, we did not adjust the

[5] Upon a review of the private stumpage prices reported by the Government of Quebec in Exhibit 53 of its June 28, 2001 submission, we only found private stumpage prices for SPF. The studies indicate that other species have different private stumpage prices but does not provide private stumpage prices for the other species. We calculated the profit realized by an independent harvester on SPF and applied that profit to the harvesting costs for other species. This approach is reasonable as the GOQ reports average harvesting costs which are the same for all species in the private forests.

profit calculated by 50 percent as we did for Alberta, because the profit calculation yielded a *negative* C$ 2.64. Because the profit calculation yields a negative result, we are not making an adjustment for profit.

As discussed below, for Manitoba and Saskatchewan we have no information on harvesting costs or profit. Therefore, to comply with the Panel's decision, as discussed below, we have recalculated the benchmark prices for these provinces based on weighted-average import and domestic data from Boreal forest provinces.[6] Consistent with that approach, we have also adjusted the resulting benchmarks by the weighted-average harvesting costs from the other Boreal forest provinces for which data is available, including amounts for profit as described above.

Finally, with respect to B.C., we carefully reviewed the information on the record. Evidence on the record demonstrates that sometimes licensees log their own timber, but they employ contractors to harvest more than half of the total. See *Ready for Change*, Dr. Peter H. Pearse, submitted by Dewey Ballantine LLP, January 2, 2002. As discussed above, independent contractors harvest timber for a fee and such fee for harvesting services includes the profit the service provider is earning on its harvesting operations. Thus, it is neither necessary nor appropriate to add an additional amount for profit to that portion of the harvesting costs reported by independent harvesters. However, with respect to the remaining portion, evidence demonstrates that, in some instances, the questionnaire responses included cost information supplied by certain "stump to dump" contractors hired by the integrated lumber producers. Those portions of the reported costs were not based on the

[6] These provinces are Quebec, Ontario, Manitoba, Saskatchewan and Alberta.

fee-for-service (*i.e.*, the payment to the logging contractor) and thus would not include an element of profit. Similarly, costs reported by the integrated lumber producers regarding their own harvesting operations would not include an element of profit. In an effort to comply with the Panel's directions and yet, not double count profit in the fee for service data, we determine to include an element for profit for only a portion of the harvesting costs data. We do not know the precise portion of the cost data that is fee for service. As discussed above, consistent with past Department practice where we lacked record information to determine whether and to what extent certain costs or benefits accrued to various parties in a transaction, it is reasonable to determine that half the costs include profit and half do not. Therefore, applying the approach discussed above, we have treated half of the harvesting costs as fee for service and added profit to the remaining half. Because we have no means of determining a profit amount specific to B.C., similar to the suggestion by the Canadian parties, we have used as our surrogate, the average of the profit values calculated for Alberta and Quebec; the two provinces for which we calculated individual profit values.

Alberta

The Panel remanded one issue specific to Alberta that affects the calculation of the stumpage benefit: recalculation of the benchmark log price for Alberta without use of the import data.

Market Log Prices

The Panel directed the Department to recalculate the benchmark log price for Alberta without use of the import data. Specifically, the Panel found that the relatively small volume of imports, which the Department averaged with the weighted-average price derived from KPMG Timber Damage

Assessment (TDA), may not be considered representative of market conditions in Alberta. Accordingly, the Department has revised its calculation of the benchmark, eliminating import data and only using the KPMG TDA weighted-average.

British Columbia

The Panel remanded six issues for reconsideration specific to British Columbia (B.C.) that affect the calculation of the stumpage benefit: (1) the numerator in B.C.; (2) the Vancouver Log Market prices; (3) the Vernon price list; (4) the Revelstoke Community Forest Corp. Log Sale Prices; (5) the actual market conditions in B.C.; and (6) weight-averaging of the domestic and import data and the use of Douglas fir import prices. We address each, in turn.

Numerator

The Panel granted the Department's request to reexamine the calculation of the numerator in B.C. In the original remand calculation, the Department incorrectly applied the ratio of the Crown harvest going to sawmills in British Columbia only to certain grades of softwood sawlogs rather than to the entire Crown harvest of softwood logs. As a result, the Department understated the total volume of softwood Crown timber going to sawmills. To ensure that the numerator and denominator for the *ad valorem* rate properly match, the Department has recalculated the numerator for British Columbia by applying the percentages of all timber going to sawmills to all Crown softwood logs harvested during the POR.

Vancouver Log Market

The Panel granted the Department's request for remand to correct the Department's omission

of Douglas fir prices from the Vancouver Log Market (VLM). The Department agreed with the GOC that the VLM prices designated as "fir" referred to Douglas fir. In this remand determination, we have included the prices designated as "fir" prices in the VLM as Douglas fir prices.

Vernon Log Market Prices

The Panel granted the Department's request for remand to exclude the following categories of building logs in the Vernon price list from the benchmark calculation: "spruce bldg logs,""spruce bldg logs (dry)," "white pine (dry) bldg logs," "pine bldg logs" and "cedar bldg logs." The Department agreed with the GOC that logs designated as house/building logs are not used to produce lumber and, therefore, should not be used in the calculations. Accordingly, the Department has excluded the following categories of building logs in the Vernon price list from the benchmark calculation: "spruce bldg logs," "spruce bldg logs (dry)," "white pine (dry) bldg logs," "pine bldg logs" and "cedar bldg logs."

Revelstoke Log Prices

The Panel granted the Department's request for remand to exclude from the benchmark calculation for B.C., the Revelstoke Community Forest Corp. Log Sale Prices on the basis that the Revelstoke log yard draws its supply exclusively from Crown Tree Farm Licenses. Accordingly, the Department has excluded the Revelstoke Community Forest Corp. Log Sale Prices from the benchmark calculation for B.C.

Actual Market Conditions

The Panel directed the Department to recalculate the benchmark price for stumpage in B.C.

"taking into account the actual market conditions that govern the sale of timber harvesting authority in that province, including the fact Crown stumpage fees are charged for stands rather than for the individual species." See Panel Decision at 19. In complying with the Panel's instructions, we understand that the subsidy calculations may not be based upon comparisons of species-specific benchmarks and Crown species-specific stumpage charges. Determining a methodology that takes into account the fact that Crown stumpage fees in B.C. are charged on a stand rather than a species-specific basis has been left to the Department's discretion.

To comply with the Panel's instructions we first examined how a "stand" should be defined for purposes of the benefit calculation. During the POI, there were a large number of stands of trees sold by the B.C. harvesting authority. Although a number of factors may affect the market value of those stands, the value is primarily a function of the species contained in the stand and the relative harvesting costs of the stand. However, the record of this proceeding does not contain this information – stumpage value, volume, species mix and harvesting costs – for each stand sold by B.C. during the POI. We are therefore unable to calculate a benefit for each individual stand.

We thus developed an alternative approach that is supported by record information. Under our stand approach, we constructed a single, weighted-average benchmark price for the entire Crown harvest that reflected the relative species mix in B.C., *i.e.*, a single B.C. stand value. By comparing that benchmark to the total revenue actually collected for the Crown harvest, we have taken account of the fact that, when selling by stand, the unitary stumpage price for the stand may be below market for some species, but above market for other species. The single stand analysis focuses on whether adequate

remuneration was paid for the stand as a whole, not on a species-specific basis. We therefore consider this approach to be consistent with the Panel's instructions to recalculate the benchmark price for stumpage taking into account the actual market conditions that govern the sale of timber in B.C.

As noted above, when setting a single price for a stand of trees, the primary consideration is the species mix within the stand, *i.e.*, the proportion of higher value versus lower value trees. Therefore, absent stand-specific data, to establish the market value for the B.C. stand, we calculated the species mix in all of B.C., *i.e.*, the proportion of each species in the total harvest. We next multiplied the proportional amount for each species in the stand by the weighted-average market log price for each species and summed the results. We then compared the resulting total market benchmark with the actual total revenue collected by B.C. for the entire harvest during the POI. Although this method departs from our past practice of treating the Coast and Interior regions of B.C. separately, in light of limitations of the available data, and the fundamental difference in the new "stand" analysis, we reconsidered that approach. For the reasons explained below, we determine that it is appropriate to treat B.C. as a single stand for purposes of this calculation.

First, to construct our benchmark price we used the same market-based log prices utilized in the original remand. After excluding the Revelstoke log prices from the calculations in accordance with the Panel's instructions, however, the Department is left with three sources of market log price data – imports into B.C., the Vernon Market and the VLM. We noted a number of problems in using this data to establish weighted-average log prices for each species in the B.C. stand. First, the log prices for the Interior region of B.C., those contained in the Vernon data, are based on volumes that are very

small compared to the volumes for prices contained in the VLM and import data. Moreover, the Vernon prices represent less than 0.06 percent (or 6/10 of one percent) of the entire Interior harvest. Next, for some species the sources contain no price data at all or the prices are based on very small log volumes, an issue which the Panel has previously found to be problematic.[7] Finally, we noted that there are wide variations between the weighted-average log prices for certain species that have very similar market applications and are considered interchangeable. These price differences were most notable between (1) Douglas Fir and Larch and (2) Lodgepole Pine, Englemann Spruce and Subalpine Fir (Balsam). These two categories are commonly known as Fir-Larch and SPF, respectively, for finished lumber products.

Second, the benefit calculations in the underlying investigation and the original remand were based on species-specific comparisons. In accordance with the Panel's decision, however, the new approach requires a stand analysis rather than a species-specific analysis. As noted above, the record does not contain the necessary information to perform the benefit calculation for each individual stand in B.C. Moreover, although there are certain unique species of Crown harvest on the Coast, there is significant overlap in the species harvested throughout the province. To the extent that there are some differences in species, this is taken into account by reflecting the overall "species mix," *i.e.*, the relative proportion of each species, in the calculation of the market benchmark for the B.C. stand as a whole. Additionally, there is overlap in the import prices which apply to both the Coast and the Interior, and

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[7] For example, there are no import prices for Larch or Balsam; no VLM prices for Larch, White Pine, or Yellow Pine; and no Vernon prices for Cypress or Yellow Pine. Further, the overall volume data from all three data sources is very small for Larch, Lodgepole Pine, Whitebark Pine, White Pine and Yellow Pine.

the Panel has recognized that using those prices for all of B.C. is appropriate.

For these reasons we concluded that comparing a single market benchmark price for the entire B.C. harvest with the total amount of stumpage fees collected by the Crown for that "stand" is appropriate and best utilizes the available data sources. To demonstrate this point, we note that the log prices contained in the Vernon data are based on a total volume of 29,720 cubic meters for all species, while the prices contained in the VLM and import data are based on total volumes for all species of 6,124,997 and 35,808 cubic meters, respectively. By calculating species-specific log prices that are based on using all data sources, we are significantly broadening the overall data-set and improving the integrity of the benchmark prices.

Moreover, we determined that it is appropriate to calculate a single weighted-average benchmark price for (1) Douglas Fir and Larch and (2) Lodgepole Pine, Englemann Spruce and Subalpine Fir (Balsam). As noted above, the benchmark prices for Larch and Lodgepole Pine are based on volume data that are very small; moreover, the weighted-average log benchmark prices for these species were significantly different from the prices for related species that are marketed more or less interchangeably, *i.e.*, Douglas Fir and Spruce/Subalpine Fir (Balsam), respectively. For example, the Vernon Log Yard sorted and sold "Fir Larch Saw Log" and "Spruce Pine Balsam Saw Log" as one price. By calculating a combined benchmark price for Douglas Fir-Larch and Lodgepole Pine/Spruce/True Fir (Balsam), we are broadening the data-set which allows us to overcome some of the data infirmities and these groupings also reflect market conditions in B.C.

We also determined that it is not appropriate to calculate weighted average species-specific log

prices for Whitebark Pine, White Pine and Yellow Pine. As already noted, there are no benchmark prices for Whitebark Pine, and the volume data for White and Yellow Pines are extremely small, *i.e.*, 276 and 104 cubic meters, respectively. Further, these species only account for approximately 0.21 percent of the overall B.C. harvest.

Weighted-Average Log Prices and Douglas Fir

The Panel directed the Department to recalculate the benchmark for B.C. and to explain the basis for our action. Specifically, the Panel stated that, if the Department is able to calculate a benchmark with weight-averaging of the domestic and import data, we are directed to do so. As discussed above, in calculating our benchmark for B.C., we weight-averaged import prices with prices from the VLM and Vernon. Therefore, the Department has complied with the Panel's remand to calculate the benchmark for B.C. by weight-averaging the domestic and import data.

The Panel also instructed the Department to determine whether there was substantial evidence to support the use of Douglas fir imports in the benchmark. The panel cited the GOC's submission of October 14, 2003, in which the GOC asserted that the three largest importers of Douglas fir were Bell Pole Company, Fraserwood Industries (Fraserwood) and Heatwave Technologies (Heatwave), and that none were lumber producers. The Panel stated that, if these assertions are true, there is not substantial evidence to support the use of Douglas fir import prices.

We reviewed the December 21, 2001, submission on behalf of the BC Lumber Trade Council and the Province of B.C. in which the claims with respect to Douglas fir imports were first raised. The letter transmitted a paper prepared for the investigation entitled "Critique of Petitioner's Log Import

Contentions" by Howard M. Saunders of H&W Saunders Associates Ltd. And David J. Jendro of Wesley Rickard Inc. According to the paper, "Bell Pole Company has no sawmilling facility." No such claim was made with respect to Fraserwood or Heatwave. Rather, the authors assert that "both Fraserwood and Heatwave are specialty radio-frequency dry kiln operators." Such assertions, even if correct, do not support a determination that Fraserwood and Heatwave are not producers of subject merchandise. In fact, kiln-drying is an essential stage in the production of subject merchandise. Thus, we determine that Fraserwood and Heatwave are, in fact, producers of subject merchandise. Thus, the Department determines that there is not substantial evidence to support the assertions that these importers are not involved in the production of subject merchandise.

While it may be appropriate to remove from the benchmark calculation the imports of Douglas fir made by Bell Pole Company because such imports were not used to produce subject merchandise, the report did not indicate the volume of imports by company; it merely asserted that these three companies were the three largest importers. Because there is no evidence on the record regarding company-specific import volumes and/or values, we have no means of determining which imports were made by Bell Pole Company. Nor do we have any means for determining which imports were made by Fraserwood, Heatwave, or any of the other importers. We have no reason to determine that the value and volume of imports by Bell Pole Company are significantly greater or less than those imported by producers of subject merchandise. Accordingly, we confirmed our original conclusions that Douglas fir import prices are reflective of the market prices of logs used to produce softwood lumber. Therefore, we have continued to use these import prices.

Manitoba and Saskatchewan

The Panel remanded three issues specific to Manitoba and Saskatchewan that affect the calculation of the stumpage benefit: (1) recalculate the benchmark log price for Manitoba without use of the import data; (2) recalculate the benchmark log price for Saskatchewan without use of the import data; and (3) consider the issue of adjustment for harvesting costs for Manitoba and Saskatchewan.

Benchmark Log Prices

The Panel directed the Department to recalculate the benchmark log prices for Manitoba and Saskatchewan without use of the import data because the quantity of imports into Manitoba and Saskatchewan that the Department relied on was small and therefore maybe be unrepresentative. As noted by the Panel, however, we have a dearth of data specific to Manitoba and Saskatchewan. See Panel decision, at 22-23. Specifically, we were unable to find domestic log prices in either Manitoba or Saskatchewan. Lacking both import log data and domestic log data we have determined to develop surrogates. Therefore, as a surrogate, we based our recalculations for both Manitoba and Saskatchewan on a weighted-average of the import and domestic log price data on the record from all of the Boreal provinces. Because both Manitoba and Saskatchewan are located in the Boreal forest region of Canada, we determined that import and domestic prices in other Boreal provinces would reasonably reflect prices in Manitoba and Saskatchewan.

Harvesting Costs

The Panel granted the Department's request for a remand to reconsider the issue of adjustments for harvesting costs for Manitoba and Saskatchewan. Upon reconsideration, and

consistent with the revised methodology for calculating the Manitoba and Saskatchewan benchmarks, in recalculating the derived benchmark stumpage price for both Manitoba and Saskatchewan we have used as a surrogate, the harvesting and hauling costs on the record from the other Boreal forest provinces.

Specifically, we weight-averaged the harvesting and hauling costs from Alberta, Ontario and Quebec to get a per unit harvesting cost for SPF. We then calculated a weighted-average derived SPF log price using the weighted-average domestic and import log prices that we used in the calculations for Alberta, Quebec, and Ontario. To calculate the benefit, we subtracted the weighted per unit harvesting cost from the derived benchmark SPF log price. We then multiplied the per unit differential by the harvest volume in both Manitoba and Saskatchewan to get the province benefit.

Ontario

The Panel remanded three issues specific to Ontario that affect the calculation of the stumpage benefit: (1) exclude price listings for "pine" logs that were actually listings for "White Pine" logs; (2) recalculate the benchmark price in Ontario taking into account the actual market conditions that govern the sale of timber by the harvesting authority in that province; and (3) recalculate the Ontario benchmarks without use of the Sawlog Journal data and weight-average the imports with the KPMG domestic log sales information. We address each, in turn.

White Pine/Sawlog Bulletin

The Panel granted the Department's request for a remand to exclude price listings for "pine" logs that were actually listings for "White Pine" logs in calculating the benchmark in Ontario. The Panel,

however, also separately instructed the Department to remove all price listings from the Sawlog Bulletin (also referred to as the "Sawlog Journal") from the calculations. Because the price listings for White Pine were from the Sawlog Bulletin, the elimination of all Sawlog Bulletin prices from the Ontario calculations eliminated these prices as well. As discussed elsewhere in this remand determination, we have recalculated the benchmark without Sawlog Bulletin prices, including prices for White Pine.

SPF Benchmark

The Panel directed the Department to recalculate the benchmark price in Ontario taking into account the actual market conditions that govern the sale of timber by the harvesting authority in that province. In our original calculations, we calculated per unit benefits according to the five species groups reported by the Government of Ontario (GOO): pine, spruce, red pine, white pine, and other conifer. The Panel agreed with the GOO that information on the record indicates that the GOO sells timber according to three species categories: (1) SPF; (2) Red and White Pine, and (3) Hemlock and Cedar. Therefore, pursuant to the Panel's instruction, we have recalculated the per unit benefits using market benchmarks for those three categories.

Weight Averaging

The Panel directed the Department to recalculate the Ontario benchmarks without use of the Sawlog Journal data and to weight-average the imports with the KPMG domestic log sales information. As discussed above, we have complied with the Panel's instructions and removed the Sawlog Bulletin price listings from the Ontario benchmark calculation. We have also complied with the Panel's instructions and weight-averaged the imports with the KPMG "delivered wood cost" data. However,

because the KPMG report pertains only to the production of SPF, and does not contain any pricing information on Red and White Pine or Hemlock and Cedar, we weight-averaged the imports and domestic prices only with respect to SPF. For determining the benchmark for Red and White Pine and for Hemlock and Cedar, we relied on the weighted-average import prices.

Quebec

The Panel remanded three issues specific to Quebec that affect the calculation of the stumpage benefit: (1) adjustment for harvesting costs; (2) possible inclusion of pulpwood imports in the benchmark; and (3) exclusion of the Sawlog Journal data from the benchmark. We address each, in turn.

Harvesting Costs

The Panel granted the Department's request for a remand to make adjustments, both downward and upward, for certain harvesting costs in Quebec. In Quebec, tenureholders are required to incur some silviculture costs for which they do not receive credit toward their stumpage charges. In addition, tenureholders voluntarily incur some silviculture costs for which they receive credit against their stumpage charges. We made an upward adjustment for the mandatory silviculture expense for which no credit is granted. Additionally, we made a downward adjustment for silviculture costs that are credited against stumpage charges.

Pulpwood Imports

The Panel granted the Department's request for a remand to re-evaluate whether Quebec mills use pulpwood imports to produce softwood lumber. The Canadian parties argue that because the

volume of U.S. logs used by the companies requesting exclusion in the investigation exceeded the volume of sawlog imports relied on by the Department in the Original Remand Determination, it is clear that pulpwood is used by Quebec sawmills. Therefore, the Canadian parties contend that the Department should include in the Quebec benchmark calculation, prices for imported pulpwood. To accomplish this, the Canadian parties argue that the Department should disregard official Statistics Canada import data collected by the Department. Our analysis of the record supports our original conclusion that there is not substantial evidence that Quebec sawmills imported pulpwood for processing into softwood lumber.

First, we begin with the fact that the Government of Quebec does not classify sawlogs and pulplogs based on physical characteristics. The classification "sawlog" refers to a log that goes to a sawmill, and the classification "pulplog" refers to a log that goes to a pulp mill. The Government of Quebec has also reported that, using this classification system, importers provide the tariff classification for the logs they import. In other words, the mills which imported logs from the United States reported to Statistics Canada whether the logs were sawlogs (*i.e.*, intended for processing in a sawmill) or pulplogs (*i.e.*, intended for processing in a pulp or paper mill). The data used by the Department is based on the importers' representations concerning the intended use of the logs. Thus, to accept Canada's challenge to our use of that data, it is necessary to conclude that importers have misclassified their log imports. There is no basis in the record for such a conclusion.

Moreover, the Canadian parties' reliance on the data collected by the Department while considering company exclusions is misplaced. That evidence relates to the volume of logs that those

producers *consumed* during the POI. There is, however, no record evidence to establish when those logs were purchased or, when logs that may have been purchased during the POI were actually imported, *i.e.*, some logs consumed during the POI may have been imported *prior* to the POI. There is therefore no basis to conclude that there is any correlation between the volume of logs *consumed* by these producers during the POI and the volume of logs *imported* during the POI. There is therefore no basis for Canada's assumption that this data demonstrates that producers must be using pulplog imports to make softwood lumber. Accordingly, the Department has continued to rely on the data as actually reported to Statistics Canada and did not include imported pulplog prices in the benchmark calculation.

Sawlog Journal/Weighted-Average Log Prices

The Panel directed the Department to recalculate the benchmark log prices for Quebec without the use of the Sawlog Journal data and by weight-averaging the import and Syndicate prices. The Department has complied with the Panel's remand and removed the prices from the Sawlog Journal from the Quebec benchmark. The Department weight-averaged the import and Syndicate prices. However, based upon our review of the Syndicate prices, we made certain corrections from the Original Remand Determination. Specifically, the Department determined that it was appropriate to weight the prices using the volumes as opposed to what was done in the Original Remand Determination where the Department mistakenly used value figures for weighting. Additionally, to comply with the Panel's remand, the Department did not rely on Syndicate prices for which there was no volume data because we would not be able to weight that data properly. Finally, we did not include Syndicate prices which we were able to identify for logs going to non-sawmill destinations and prices

for logs destined for mills outside of Quebec because such logs would not be used to make softwood lumber in Quebec. After accounting for these issues, the Department weight-averaged the import prices with the Syndicate prices to arrive at a benchmark.

II. Calculation of Benefit

To determine the benefit conferred by provincial stumpage programs, we first calculated a weighted-average market-based price for logs. From the market-based price for logs, we subtracted harvest and haul costs, including where appropriate, an adjustment for the profit realized by an independent harvester to derive a market-based stumpage price. We, then compared the derived market stumpage price with fees charged for Crown stumpage. We concluded that where, fees charged to acquire Crown stumpage were less than the derived market stumpage price, a benefit existed. Detailed calculations for each province can be found in the Calculation Memo for each province.[8]

III. Denominator

The Panel directed the Department to recalculate the denominator to include the appropriate proportion of the production of smaller sawmills in all provinces, and to provide a reasoned explanation of any deviation from the proportion included in respect of the production of the large sawmills.

The Panel decided that the Department properly determined to include in the denominator all softwood lumber, co-products, and residual products produced from logs included in the numerator.

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[8] See Memorandum from the Team, through James Terpstra to the File, RE: Second NAFTA Panel Remand: Countervailing Duty Order on Certain Softwood Lumber Products from Canada, NAFTA Panel 2nd Remand: Calculation of Country-wide rate and Individual Provincial Benefits (July 30, 2004).

The Panel went on to state, however, that because the Department accepts that the composition of small mills' residual products production mirrors that of the larger mills for which an appropriate valuation has been included in the denominator, the Department should include a corresponding proportion of smaller mill production in the denominator unless the Department has a reasoned basis to establish that the facts justify use of a different proportion. Therefore, the Panel directed that the Department recalculate the denominator to include the appropriate proportion of the production of smaller sawmills in all provinces, and to provide a reasoned explanation of any deviation from the proportion included in respect of the production of the large sawmills.

For purposes of this remand determination, the Department has utilized as the proportion of smaller mill production, the shipment amounts provided by the GOC in its October 17, 2003 submission for Alberta, B.C., Manitoba, Ontario, and Saskatchewan. We have not changed the denominator information for Quebec because sales from small sawmills are already included in the denominator data for Quebec.[9]

IV. Company-Specific Exclusion Requests

A. Materiaux Blanchet's St. Pamphile Border Mill

The Panel directed the Department to recalculate its exclusion analysis for Materiaux Blanchet's St. Pamphile Border Mill on a mill-based subsidy rate as it had determined in the original investigation. The Panel agreed with the Quebec Lumber Manufacturers Association that the Department's use of a company-wide exclusion methodology, on remand, was a change in methodology, as opposed to

[9] GOC response to September 25, 2003 remand questionnaire, Exh. GOC-GEN-43, Table 2 (October 17, 2003).

correction of a clerical error. As such, the Panel determined that reassessment of the mill's subsidy rate on a company-wide basis was a legal error.

Consistent with the Panel's direction, we have recalculated the subsidy benefit applicable only to the St. Pamphile mill. As we did in the Final Determination, we applied the applicable province-specific rate to all purchases of Crown logs and Canadian lumber by the St. Pamphile border mill to derive any benefit from stumpage programs. We added any benefit from other programs and divided the total mill-specific benefit by the total mill shipment value to determine whether the St. Pamphile mill received a zero or *de minimis* benefit. See the July 30, 2004 Calculation Memorandum on Exclusion Requests. As a result, we determine that Materiaux Blanchet's St. Pamphile border mill received zero or *de minimis* benefits during the POI and, therefore, is eligible for exclusion from the order if the Panel affirms this determination.

B. Other Companies

As a consequence of the newly calculated subsidy rate, which is lower than the original calculated stumpage benefit rate, we reconsidered the exclusion requests of those five companies that were not excluded from the order either in the Final Determination or Original Remand Determination because they did not have a zero or *de minimis* subsidy rate. As we did in the Final Determination and Original Remand Determination, we applied the applicable province-specific rate to all purchases of Crown logs and Canadian lumber to derive any benefit from stumpage programs. We added any benefit from other programs and divided the total company benefit by the total company shipment value to determine whether the requesting company received a zero or *de minimis* benefit. See the July 30,

2004 Calculation Memorandum on Exclusion Requests. Where a reviewed company received a zero or *de minimis* benefit during the POI, we have excluded that company from this investigation. Specifically, Bois Daaquam Inc., Bois Omega, Ltee., J.A. Fontaine et. fills, Maibec Industries, and Scierie Nord-Sud Inc. received zero or *de minimis* benefits during the POI and, therefore, are eligible for exclusion from the order if the Panel affirms this determination.[10]

CONCLUSION

In accordance with the remand order, we have reconsidered certain calculation issues and company-specific exclusions, as described above. As a result, we have recalculated the *ad valorem* subsidy rate for certain softwood lumber products from Canada for the period April 1, 2000, through March 31, 2001. The revised rate is 7.82 percent *ad valorem*. In addition, we have determined that Bois Daaquam Inc., Bois Omega, Ltee., J.A. Fontaine et. fills, Maibec Industries, and Scierie Nord-Sud Inc. as well as the St. Pamphill mill of Materiaux Blanchet Inc., are eligible for exclusion from the countervailing duty order.

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James J. Jochum
Assistant Secretary
for Import Administration

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[10] In the Original Remand Determination, we determined that Produits Forestiers Dube and Scierie West Brome are eligible for exclusion from the order. See Original Remand Determination at 45-46.

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Date